IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 3032 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. K.K. Tated for Petitioner.

Mr. P.B. Shah for Respondent Nos. 1, 7 to 12.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 25, 2005

P.C.

. The Petitioner are original Plaintiffs. The Plaintiff-Respondent had filed a suit for declaration that the Respondent be directed to pay Rs.26,000/- failing which the Respondents had no right to get a decree for redemption of the mortgage of the suit property. The property was mortgaged in favour of Plaintiff by original Respondent Nos. 1 to 4 as per pleadings in Paragraph 4 of the plaint. By order dated 6.1.1989 the learned trial court held that the right of the Respondents to redeem the mortgage has been extinguished and the Plaintiff had become absolute owner. The original Respondent Nos. 2, 3 and 4 preferred an appeal. The

legal heirs of Respondent No. 1 were added as respondents in the appeal. It transpires that during the pendency of the proceedings the appellants Nos. 1 and 2 expired on 5.11.1995 and 16.3.1997 respectively. The application for bringing legal heirs of deceased appellant Nos. 1 and 2 was taken out on 19.7.2000. The application was opposed by the Petitioner herein. By the impugned order dated 8.8.2002 the learned trial court was pleased to allow and permit the legal heirs to be brought on record on the ground that appellant No. 3 a legal heir of the deceased is already on record and as such the appeal had not abated. It is this order which is the subject matter of the present petition.

. At the hearing of this petition, on behalf of the Petitioner, their learned counsel states, that the impugned order is without jurisdiction in as much as merely because appellant No. 3 was on record by itself could not be a ground for setting aside the abatement and permitting the legal heirs to be brought on record. It is submitted that the reliefs against Appellant Nos. 1 and 2 would no longer be available to the appellant as the appeal

had abated and as valuable rights had been created in favour of Respondents. The learned counsel relies on the judgement of the learned Single Judge of this Court in the case of Prithdayal Chetandas and others Vs. Jamnadas Ghanshamdas Tuliani and another 1989(3) BCR 1. Referring to various observations in that judgment it is contended that when a decree is passed jointly against several defendants and one of them dies during the pendency of an appeal preferred by them, it is imperative for the other appellants to bring on record the legal heirs. In the instant case, an application was filed to bring on record the legal heirs of appellant Nos. 1 and 2 belatedly and to set aside the abatement.

. The question is whether it was within the jurisdiction of the learned court to pass the impugned order. In the instant case, relief sought was the matter of redemption of mortgage. Any one of the mortgagors could have redeemed the mortgage. As such the entire appeal would not have abated and could have been proceeded with. Apart from that the appellant No. 3 is legal heir of deceased appellant Nos. 1 and 2 and as such also the estate was represented. In these

circumstances, it was within the jurisdiction of the court to have considered that aspect while exercising its discretion in allowing the legal heirs to be brought on record. In that context it is really not required to go into the judgement cited by the learned counsel as the facts therein, reliefs and issues were different. Admittedly there was an application for setting aside the abatement and bringing legal heirs on record. The learned Judge on the facts exercised his discretion and permitted the L.R.s to be brought on record. In the light of that no interference is called for with the impugned order. Petition rejected.

. The learned counsel for the Petitioner states that this court has passed a order dated 28.4.2003 and he seeks continuation of the said order for the period of eight weeks. Considering the facts and circumstances, proceedings before the trial court be stayed for the further period of eight weeks from today.

(F.I.REBELLO,J.)